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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,358	03/30/2004	Yojiro Kinoshita	001309.00059	4108

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BANNER & WITCOFF
1001 G STREET N W
SUITE 1100
WASHINGTON, DC 20001

EXAMINER

GARRETT, ERIKA P

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 04/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/812,358	Applicant(s) KINOSHITA ET AL.	
	Examiner Erika Garrett	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 6-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 12-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention: species 1 figures 1-10; species 2 figure 11; species 3 figures 12-13; species 4 figure 14; species 5 figures 15-16; species 6 figures 17-18 and species 7 figures 19-20.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, at least claim 1 generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Susan Wolfe on 3/14/05 a provisional election was made without traverse to prosecute the invention of species 1, claims 1-5 and 12-17. Affirmation of this election must be made by applicant in replying to this Office action. Claims 6-11 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Regarding claim 5, the phrase "so as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) The invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee (6,799,803). Lee discloses the use of a backrest for chair (12) comprising frame (10) elements arranged in pairs at right and left sides, a flexible support member that bridges the frame elements to support a load of a body of a seated person and an adjust mechanism that can change a bent degree of the support member in multiple states and that can maintain the state against the load of the seated person. In regards to claim 2, wherein the adjust mechanism (14,16,18) is arranged at least one of the right and left sides and the bent degree of the support member is varied by selectively fastening one end side of the support member one of multiple different portions of the frame element locating at a corresponding side. In regards to claims 3 and 4, wherein the adjust mechanism is engaging structure between a pin (27,38) one of the support member and the frame adjust mechanism mounted on either element and at least one engaging hole (24) formed on the other and an engaging portion where the pin makes

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an engagement with the engaging hole can be varied. In regards to claim 12, wherein the adjust mechanism has an operating portion to operate the support member in order to change a bent degree of the support member; and the operating portion is exposed to a side portion of a back face. In regards to claim 5, wherein the engaging hole has multiple engaging edge portions that make an engagement with the pin so as to tie up the pin when the load of the seated person is applied to the support member and the engaging edge portions are communicating each other and the pin can be changed from a state of engaging a engaging edge portion to state of engaging another engaging edge portion by operating the pin to move along the engaging hole.

Claims 1-4 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Falzon (6,254,186). Falzon discloses the use of a backrest for chair (not shown) comprising frame (2) elements arranged in pairs at right (5) and left sides (4), a flexible support member that bridges the frame elements to support a load of a body of a seated person and an adjust mechanism (3) that can change a bent degree of the support member in multiple states and that can maintain the state against the load of the seated person. In regards to claim 2, wherein the adjust mechanism (3) is arranged at least one of the right and left sides and the bent degree of the support member is varied by selectively fastening one end side of the support member one of multiple different portions of the frame element locating at a corresponding side. In regards to claims 3 and 4, wherein the adjust mechanism is engaging structure between a pin (27) one of the support member and the frame adjust mechanism mounted on either element and at least one engaging hole (23) formed on the other and an engaging portion where the

pin makes an engagement with the engaging hole can be varied. In regards to claim 12, wherein the adjust mechanism (3) has an operating portion to operate the support member in order to change a bent degree of the support member; and the operating portion is exposed to a side portion of a back face.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Falzon (6,254,186). Falzon shows the use of all the claimed invention but fails to show the use of a bag shaped upholstery member is covered. Hattori teaches the use of a bag shaped upholstery member is covered. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the upholstery member with a covered member as taught by Hattori, in order to cover the frame elements which will give the occupant a more comfort feeling in the lumbar region.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with respect to backrest for a chair: U.S Pat. No. 5716098, 4880271, 4452485,


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5797652, 5791733, US005215350A, US006575530B1, US006030041A,
US006805405B2, US006848744B1, US006820933B2, US006338530B1,
US006520580B1, US006588836B1.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erika Garrett whose telephone number is 571-272-6859. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EG
April 3, 2005


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600